



STATE OF ARIZONA
Department of Health Services

NOTICE OF INVITATION FOR BID

**ARIZONA DEPARTMENT OF
HEALTH SERVICES**

1740 West Adams Street
Phoenix, Arizona 85007
(602) 542-1040
(602) 542-1741 Fax

SOLICITATION NUMBER:

HB841035

**SOLICITATION DUE
DATE/TIME:**

Friday, August 3, 2007 at 3:00 P.M.

SUBMITTAL LOCATION:

**Arizona Department of Health Services
Office of Procurement
1740 West Adams Street, Room 303
Phoenix, Arizona 85007**

DESCRIPTION:

Medical Equipment Rental for the Arizona State Hospital

PRE-BID CONFERENCE:

Date

Time

Location

In accordance with A.R.S. § 41-2533, competitive sealed bids for the services specified will be received by the Arizona Department of Health Services at the above specified location, until the time and date cited. Offers received by the correct time and date will be opened and the name of each offeror will be publicly read.

Offers must be in the actual possession of the Arizona Department of Health Services on or prior to the time and date, and at the location indicated above. Late offers will not be considered.

Offers must be submitted in a sealed envelope or package with the solicitation number and the Offeror's name and address clearly indicated on the envelope or package. All offers must be completed in ink or typewritten. Additional instructions for preparing an offer are included in this solicitation.

With seventy-two (72) hours prior notice, persons with disabilities may request special accommodations such as interpreters, alternative formats, or assistance with physical accessibility. Such requests are to be addressed to the solicitation contact person named below.

OFFERORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION

Solicitation Contact Person:

Rebecca O'Brien

Arizona Department of Health Services

(602) 364-2116

obrienr@azdhs.gov

Procurement Administrator

Date

UNIFORM INSTRUCTIONS TO OFFERORS

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A. Definition of Terms. As used in these Instructions, the terms listed below are defined as follows:

1. “Attachment” means any item the Solicitation requires an Offeror to submit as part of the Offer.
2. “Contract” means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement of Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments, and any terms applied by law.
3. “Contract Amendment” means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
4. “Contractor” means any person who has a Contract with the State.
5. “Days” means calendar days unless otherwise specified.
6. “Exhibit” means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
7. “Offer” means bid, proposal or quotation.
8. “Offeror” means a vendor who responds to a Solicitation.
9. “Procurement Officer” means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
10. “Solicitation” means an Invitation for Bids (“IFB”), a Request for Proposals (“RFP”), or a Request for Quotations (“RFQ”).
11. “Solicitation Amendment” means a written document that is signed by the Procurement Officer and issued for the purpose of making changes to the Solicitation.
12. “Subcontract” means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
13. “State” means the State of Arizona and Department or Agency of the State that executes the Contract.
14. “Hospital” means the Arizona State Hospital where the services will be provided.
15. “Arizona Community Protection and Treatment Center” (“ACPTC”) means the area of the Hospital where sexually violent persons are committed.
16. “Joint Commission on Accreditation of Healthcare Organizations” (“JCAHO”) means the independent, not-for-profit organization, which sets standards and accrediting for health care, focusing on improving the quality and safety of care provided to patients by health care organizations.
17. “Arizona Department of Health Services” (“ADHS”) means the State Agency who is offering the RFP and will enter in to the Contract for the stated services.
18. “Centers for Medicare and Medicaid Services” (“CMS”) means the Federal Agency within the Department of Health and Human Services (“DHHS”) that establishes the conditions of participation that must be met by providers and suppliers participating in Medicare and Medicaid programs. CMS is designated to administer standard compliance by the Secretary of DHHS.
19. “Assurance and Licensure” means the Agency within the Arizona Department of Health Services that oversees licensing rules and regulations.

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B. Inquiries

1. Duty to Examine. It is the responsibility of each Offeror to examine the entire Solicitation, seek clarification in writing (inquiries), and examine its' Offer for accuracy before submitting the Offer. Lack of care in preparing an Offer shall not be grounds for modifying or withdrawing the Offer after the Offer due date and time, nor shall it give rise to any Contract claim.
2. Solicitation Contact Person. Any inquiry related to a Solicitation, including any requests for or inquiries regarding standards referenced in the Solicitation, shall be directed solely to the Solicitation contact person. The Offeror shall not contact or direct inquiries concerning this Solicitation to any other State employee unless the Solicitation specifically identifies a person other than the Solicitation contact person as a contact.
3. Submission of Inquiries. The Procurement Officer or the person identified in the Solicitation as the contact for inquiries except at the Pre-Offer Conference, require that an inquiry be submitted in writing. Any inquiry related to a Solicitation shall refer to the appropriate Solicitation number, page and paragraph. Do not place the Solicitation number on the outside of the envelope containing that inquiry, since it may then be identified as an Offer and not be opened until after the Offer due date and time. The State shall consider the relevancy of the inquiry but is not required to respond in writing.
4. Timeliness. Any inquiry or exception to the solicitation shall be submitted as soon as possible and should be submitted at least seven (7) days before the Offer due date and time for review and determination by the State. Failure to do so may result in the inquiry not being considered for a Solicitation Amendment.
5. No Right to Rely on Verbal Responses. An offeror shall not rely on verbal responses to inquiries. A verbal reply to an inquiry does not constitute a modification of the solicitation.
6. Solicitation Amendments. The Solicitation shall only be modified by a Solicitation Amendment.
7. Pre-Offer Conference. If a pre-Offer conference has been scheduled under this Solicitation, the date, time and location shall appear on the Solicitation cover sheet or elsewhere in the Solicitation. Offerors should raise any questions about the Solicitation or the procurement at that time. An Offeror may not rely on any verbal responses to questions at the conference. Material issues raised at the conference that result in changes to the Solicitation shall be answered solely through a written Solicitation Amendment.
8. Persons With Disabilities. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Solicitation contact person. Requests shall be made as early as possible to allow time to arrange the accommodation.

C. Offer Preparation

1. Forms: No Facsimile, Telegraphic or Electronic Mail Offers. An Offer shall be submitted either on the forms provided in this Solicitation or their substantial equivalent. Any substitute document for the forms provided in this Solicitation must be legible and contain the same information requested on the forms, unless the solicitation indicates otherwise. A facsimile, telegraphic, mailgram or electronic mail Offer shall be rejected if submitted in response to requests for proposals or invitations for bids, unless the solicitation indicated otherwise.
2. Typed or Ink; Corrections. The Offer shall be typed or in ink. Erasures, interlineations or other modifications in the Offer shall be initialed in ink by the person signing the Offer. Modifications shall not be permitted after Offers have been opened except as otherwise provided under applicable law.
3. Evidence of Intent to be Bound. The Offer and Acceptance form within the Solicitation shall be submitted with the Offer and shall include a signature (or acknowledgement for electronic submissions, when authorized) by a person authorized to sign the Offer. The signature shall signify the Offeror's intent to be bound by the Offer and the terms of the Solicitation and that the information provided is true, accurate and complete. Failure to submit verifiable evidence of intent to be bound, such as an original signature, shall result in rejection of the Offer.

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4. Exceptions to Terms and Conditions. All exceptions included with the Offer shall be submitted in a clearly identified separate section of the Offer in which the Offeror clearly identifies the specific paragraphs of the Solicitation where the exceptions occur. Any exceptions not included in such a section shall be without force and effect in any resulting Contract unless such exception is specifically accepted by the Procurement Officer in a written statement. The Offeror's preprinted or standard terms will not be considered by the State as a part of any resulting Contract.
 - i. Invitation for Bids. An Offer that takes exception to a material requirement of any part of the Solicitation, including terms and conditions, shall be rejected.
 - ii. Request for Proposals. All exceptions that are contained in the Offer may negatively affect the State's proposal evaluation based on the evaluation criteria stated in the Solicitation or result in rejection of the Offer. An offer that takes exception to any material requirement of the solicitation may be rejected.
5. Subcontracts. Offeror shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities in the Offer. Offerors/Bidders are encouraged to make every effort to utilize subcontractors that are small, women-owned and/or minority-owned business enterprises. This could include subcontracts for locksmithing, heating/cooling maintenance, or dietary janitorial services. Offerors who are committing a portion of their work to such subcontractors shall do so by identifying the type of services and work to be performed by providing detail concerning your organization's utilization of small, women-owned and/or minority business enterprises. Emphasis should be placed on specific areas that are subcontracted and percentage of Contract utilization and how this effort shall be administered and managed, including reporting requirements.
6. Cost of Offer Preparation. The State will not reimburse any Offeror the cost of responding to a Solicitation.
7. Solicitation Amendments. Each Solicitation Amendment shall be signed with an original signature by the person signing the Offer, and shall be submitted no later than the Offer due date and time. Failure to return a signed (or acknowledgement for electronic submission, when authorized) copy of a Solicitation Amendment may result in rejection of the Offer.
8. Federal Excise Tax. The State of Arizona is exempt from certain Federal Excise Taxes on manufactured goods. Exemption Certificates will be provided by the State.
9. Provision of Tax Identification Numbers. Offerors are required to provide their Arizona Transaction Privilege Tax Number and/or Federal Tax Identification number in the space provided on the Offer and Acceptance Form.
10. Employee Identification. Offeror agrees to provide an employee identification number or social security number to the State for the purposes of reporting to appropriate taxing authorities, monies paid by the State under this Contract. If the federal identifier of the offeror is a social security number, this number is being requested solely for tax reporting purposes and will be shared only with appropriate state and federal officials. This submission is mandatory under 26 U.S.C. § 6041A.
11. Identification of Taxes in Offer. The State of Arizona is subject to all applicable state and local transaction privilege taxes. All applicable taxes shall be identified as a separate item offered in the solicitation when applicable, the tax rate and amount shall be identified on the price sheet. At all times, payment of taxes and the determination of applicable taxes is the sole responsibility of the Contractor. The Arizona State Hospital is Tax Exempt.
12. Disclosure. If the firm, business or person submitting this Offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any Federal, state or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Offeror shall fully explain the circumstances relating to the preclusion or proposed preclusion in the Offer. The Offeror shall include a letter with its Offer setting forth the name and address of the governmental unit, the effective date of this suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above shall be provided.

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13. Solicitation Order of Precedence. In the event of a conflict in the provisions of this Solicitation, the following shall prevail in the order set forth below:

- 13.1 Special Terms and Conditions;
- 13.2 Uniform Terms and Conditions;
- 13.3 Statement or Scope of Work;
- 13.4 Specifications;
- 13.5 Attachments;
- 13.6 Exhibits;
- 13.7 Special Instructions to Offerors;
- 13.8 Uniform Instructions to Offerors.
- 13.9 Other documents referenced or included in the Solicitation.

14. Delivery. Unless stated otherwise in the Solicitation, all prices shall be F.O.B. Destination and shall include all freight, delivery and unloading at the destination(s).

D. Submission of Offer

- 1. Sealed Envelope or Package. Except for electronic submissions, when authorized, each Offer shall be submitted to the submittal location identified in this Solicitation. Offers should be submitted in a sealed envelope or container. The envelope or container should be clearly identified with name of the Offeror and Solicitation number. The State may open envelopes or containers to identify contents if the envelope or container is not clearly identified.
- 2. Offer Amendment or Withdrawal. An Offer may not be amended or withdrawn after the Offer due date and time except as otherwise provided under applicable law.
- 3. Public Record. All Offers submitted and opened are public records and must be retained by the State. Offers shall be open to public inspection after Contract award, except for such Offers deemed to be confidential by the State. If an Offeror believes that information in its Offer should remain confidential, it shall indicate as confidential the specific information and submit a statement with its Offer detailing the reasons that the information should not be disclosed. Such reasons shall include the specific harm or prejudice which may arise. The State shall determine whether the identified information is confidential pursuant to the Arizona Procurement Code.
- 4. Non-collusion, Employment, and Services. By signing the Offer and Acceptance Form or other official Contract form, the Offeror certifies that:
 - i. The Offeror did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Offer; and
 - ii. The Offeror does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with all applicable Federal, state and local laws and executive orders regarding employment.

E. Evaluation

- 1. Unit Price Prevails. In the case of discrepancy between the unit price or rate and the extension of that unit price or rate, the unit price or rate shall govern.
- 2. Equitable Evaluation. To evaluate all the Bids equitably, Contractor shall provide all the documentation requested in the Special Instructions to Offerors, Special Terms and Conditions and Scope of Work, Section 4, Project Operational Requirements.
- 3. Prompt Payment Discount. Prompt payment discounts of thirty (30) days or more set forth in an Offer shall be deducted from the offer for the purposes of evaluating that price.
- 4. Late Offers. An Offer submitted after the exact Offer due date and time shall be rejected.

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5. Disqualification. A Offeror (including any of its' principals) who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity shall have its offer rejected.
6. Offer Acceptance Period. An Offeror submitting an Offer under this Solicitation shall hold its Offer open for the number of days from the Offer due date that is stated in the Solicitation. If the Solicitation does not specifically state a number of days for Offer acceptance, the number of days shall be one hundred-eighty (180). If a Best and Final Offer is requested pursuant to a Request for Proposals, an Offeror shall hold its Offer open for one hundred-eighty (180) days from the Best and Final Offer due date.
7. Waiver and Rejection Rights. Notwithstanding any other provision of the Solicitation, the State reserves the right to:
 - 7.1 Waive any minor informality;
 - 7.2 Reject any and all Offers or portions thereof; or
 - 7.3 Cancel the Solicitation.

F. Award

1. Number or Types of Awards. The State reserves the right to make multiple awards or to award a Contract by individual line items or alternatives, by group of line items or alternatives, or to make an aggregate award, or regional awards, whichever is most advantageous to the State. If the Procurement Officer determines that an aggregate award to one Offeror is not in the State's best interest, "all or none" Offers shall be rejected.
2. Contract Inception. An Offer does not constitute a Contract nor does it confer any rights on the Offeror to the award of a Contract. A Contract is not created until the Offer is accepted in writing by the Procurement Officer's signature on the Offer and Acceptance Form. A notice of award or of the intent to award shall not constitute acceptance of the Offer.
3. Effective Date. The effective date of this Contract shall be the date that the Procurement Officer signs the Offer and Acceptance form or other official Contract form, unless another date is specifically stated in the Contract.

G. Protests.

1. A protest shall comply with and be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9 and rules adopted thereunder. Protests shall be in writing and be filed with both the Procurement Officer of the purchasing agency and with the State Procurement Administrator. A protest of a Solicitation shall be received by the Procurement Officer before the Offer due date. A protest of a proposed award or of an award shall be filed within ten (10) days after the protester knows or should have known the basis of the protest. A protest shall include:
 - 1.1 The name, address and telephone number of the protester;
 - 1.2 The signature of the protester or its representative;
 - 1.3 Identification of the purchasing agency and the Solicitation or Contract number;
 - 1.4 A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
 - 1.5 The form of relief requested.

H. Comments Welcome

The State Procurement Office periodically reviews the Uniform Instructions to Offerors and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 104, Phoenix, Arizona, 85007.

SPECIAL INSTRUCTIONS TO OFFERORS

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1. OFFER AND ACCEPTANCE (120 DAYS)

In order to allow for an adequate evaluation, the State requires an offer in response to this solicitation to be valid and irrevocable for one-hundred twenty (120) days after the opening time and date.

2. BID OPENING

Bids shall be opened publicly at the time and place designated on the cover page of this document. The name of each bidder shall be read publicly and recorded. Prices will be read. Bids shall not be subject to public inspection until after Contract award.

3. BID FORMAT

One (1) original and three (3) copies of each Invitation for Bid (“IFB”) shall be submitted. The original copy of the bid should be clearly labeled “ORIGINAL”, and all copies shall clearly state “COPY”. The State shall not provide any reimbursement for the cost of developing or presenting bids in response to this IFB.

4. OFFEROR QUALIFICATIONS

The offeror shall have a minimum of five (5) years experience with the service and requirements similar to the services and requirements offered. The offeror must exhibit proof of their continuing education in their field of expertise.

5. LICENSES

The Contractor shall obtain and maintain in current status any required federal, state, county, city and local licenses, permits or certifications for the Contractor, their employees and subcontractors required for the operation of the business conducted by the Contractor. Contractor shall submit a list of all licenses and certifications they hold.

6. REFERENCES

Offeror shall submit names and telephone numbers of at least three (3) prior or current clients who have received similar services from the offeror in a similar sized environment where compliance was required for all rules, regulations, processes and procedures as defined by Joint Commission on Accreditation of Healthcare Organizations (JCAHO”), Centers for Medicare and Medicaid Services (“CMS”), State Assurance and Licensure, Office of Behavioral Health, Centers for Disease Control (“CDC”), Occupational Safety and Health Administration (“OSHA”), Maricopa County, Hospital Policies and Procedures and HIPAA regulations. The references shall include dates and descriptions of services provided.

7. REQUIRED INFORMATION

The following items shall be submitted with each bid. Failure to include all of the items may result in the bid being rejected.

- a. Offer and Acceptance (Complete top half of page 26)
- b. Completed Price Sheet/Fee Schedule (Complete Page 27)
- c. Licenses
- d. References
- e. Key Personnel Resume(s)

8. EVALUATION CRITERIA

In accordance with the A.R.S. § 41-2533, competitive sealed bidding, awards shall be made to the responsible and responsive offeror whose bid meets the requirements set forth herein.

- a. Cost
- b. Offeror’s Qualifications
- c. Conformance to the Instructions to Offerors, Uniform and Special Terms and Conditions and Scope of Work

<p style="text-align: center;">SPECIAL INSTRUCTIONS TO OFFERORS SOLICITATION NO: HB841035</p>

9. **FEDERAL IMMIGRATION LAWS, COMPLIANCE BY STATE CONTRACTORS:**

By signing the Offer, the Offeror warrants that it and all proposed subcontractors are in compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal immigration laws and regulations related to the immigration status of its employees. The Offeror shall obtain statements from all proposed subcontractors certifying compliance with this requirement and shall furnish the statements to the Procurement Officer upon request.

UNIFORM TERMS AND CONDITIONS

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- 1 Definition of Terms.** As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:
- 1.1 “*Attachment*” means any item the Solicitation requires the Offeror to submit as part of the Offer.
 - 1.2 “*Contract*” means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
 - 1.3 “*Contract Amendment*” means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
 - 1.4 “*Contractor*” means any person who has a Contract with the State.
 - 1.5 “*Days*” means calendar days unless otherwise specified.
 - 1.6 “*Exhibit*” means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
 - 1.7 “*Gratuity*” means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
 - 1.8 “*Materials*” means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
 - 1.9 “*Procurement Officer*” means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
 - 1.10 “*Services*” means the furnishing of labor, time or effort by a Contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
 - 1.11 “*Subcontract*” means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
 - 1.12 “*State*” means the State of Arizona and Department or Agency of the State that executes the Contract.
 - 1.13 “*State Fiscal Year*” means the period beginning with July 1 and ending June 30,
- 2 Contract Interpretation**
- 2.1 Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.
 - 2.2 Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
 - 2.3 Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
 - 2.3.1 Special Terms and Conditions;
 - 2.3.2 Uniform Terms and Conditions;
 - 2.3.3 Statement or Scope of Work;
 - 2.3.4 Specifications;
 - 2.3.5 Attachments;
 - 2.3.6 Exhibits;
 - 2.3.7 Documents referenced or included in the Solicitation.

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- 2.4 Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5 Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6 No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7 No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3 Contract administration and operation.

- 3.1 Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2 Non-Discrimination. The Contractor shall comply with State Executive Order No. 99-4 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3 Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4 Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5 Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6 Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7 Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8 Ownership of Intellectual Property

Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this Contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this Contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor (s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of

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vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by Contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this Contract.

4 Costs and Payments

- 4.1 Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- 4.2 Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3 Applicable Taxes.
- 4.3.1 Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
- 4.3.2 State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
- 4.3.3 Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
- 4.3.4 IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.
- 4.4 Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.
- 4.5 Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:
- 4.5.1 Accept a decrease in price offered by the Contractor;
- 4.5.2 Cancel the Contract
- 4.5.3 Cancel the Contract and re-solicit the requirements.

5 Contract changes

- 5.1 Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
- 5.2 Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.1 Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

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6 Risk and Liability

- 6.1. Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- 6.2. Indemnification
- 6.2.1 Contractor/Vendor Indemnification (Not Public Agency) The parties to this Contract agree that the State of Arizona, its' departments, agencies, boards and commissions shall be indemnified and held harmless by the Contractor for the vicarious liability of the State as a result of entering into this Contract. However, the parties further agree that the State of Arizona, its' departments, agencies, boards and commissions shall be responsible for its' own negligence. Each party to this Contract is responsible for its' own negligence.
- 6.2.2 Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnatee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnatee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its' officers, officials, agents, employees, or volunteers."
- 6.3 Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the Contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.
- 6.4 Force Majeure.
- 6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
- 6.4.2 Force Majeure shall not include the following occurrences:
- 6.4.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
- 6.4.2.2 Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
- 6.4.2.3 Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.
- 6.4.3 If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.
- 6.4.4 Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

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6.5 Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7 Warranties

7.1 Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2 Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1 Of a quality to pass without objection in the trade under the Contract description;

7.2.2 Fit for the intended purposes for which the materials are used;

7.2.3 Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4 Adequately contained, packaged and marked as the Contract may require; and

7.2.5 Conform to the written promises or affirmations of fact made by the Contractor.

7.3 Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

7.4 Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

7.5 Year 2000.

7.5.1 Notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that all products delivered and all services rendered under this Contract shall comply in all respects to performance and delivery requirements of the specifications and shall not be adversely affected by any date-related data Year 2000 issues. This warranty shall survive the expiration or termination of this Contract. In addition, the defense of *force majeure* shall not apply to the Contractor's failure to perform specification requirements as a result of any date-related data Year 2000 issues.

7.5.2 Additionally, notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that each hardware, software, and firmware product delivered under this Contract shall be able to accurately process date/time data (including but not limited to calculation, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology utilized by the State in combination with the information technology being acquired under this Contract properly exchanges date-time data with it. If this Contract requires that the information technology products being acquired perform as a system, or that the information technology products being acquired perform as a system in combination with other State information technology, then this warranty shall apply to the acquired products as a system. The remedies available to the State for breach of this warranty shall include, but shall not be limited to, repair and replacement of the information technology products delivered under this Contract. In addition, the defense of *force majeure* shall not apply to the failure of the Contractor to perform any specification requirements as a result of any date-related data Year 2000 issues.

7.6 Compliance with Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

7.7 Survival of Rights and Obligations after Contract Expiration or Termination.

7.7.1 Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.7.2 Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall

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be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8 State's Contractual Remedies

- 8.1 Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the Contract.
- 8.2 Stop Work Order.
- 8.2.1 The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 8.2.2 If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 8.3 Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.
- 8.4 Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of Contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 8.5 Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9 Contract Termination

- 9.1 Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2 Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about Contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3 Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a Contract shall attest that the Contractor is not currently suspended or debarred. If the Contractor becomes suspended or debarred, the Contractor shall immediately notify the State.

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- 9.4 Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the State without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.
- 9.5 Termination for Default.
- 9.5.1 In addition to the rights reserved in the Contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
- 9.5.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.
- 9.5.3 The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.
- 9.6 Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 10 Contract Claims. All Contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.
- 11 Arbitration. The parties to this Contract agree to resolve all disputes arising out of or relating to this Contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).
- 12 Comments Welcome. The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 104, Phoenix, Arizona 85007.

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1. PURPOSE

Pursuant to provisions of the Arizona Procurement Code, A.R.S. ' 41-2501 Et Seq., the State of Arizona, Department of Health Services (ADHS) intends to establish a contract for the materials or services as listed herein.

2. TERM OF CONTRACT (1 YEAR)

The term of the resultant contract shall commence upon award and shall remain in effect for one year unless terminated, canceled, or extended as otherwise provided herein.

3. CONTRACT EXTENSIONS 5 YEAR MAXIMUM

The contract term is for a one (1) year period subject to additional successive periods of twelve (12) months per extension with a maximum aggregate including all extensions not to exceed five (5) years.

4. CONTRACT TYPE

- ☒ Fixed Price
☐ Cost Reimbursement
☐ Revenue

5. BID OPENING

Bids shall be opened on the date and time, and at the place designated on the cover page of this document, unless amended in writing by the state agency issuing the invitation for bid. The name of each bidder and the prices of the individual line items for each respondent shall be read at this time. Bids, modifications and all other information received in response to the invitation for bid shall be shown only to authorized state personnel having a legitimate interest in the evaluation. After contract award, the invitations and evaluation documentation shall be open for public inspection.

6. PRICE INCREASE (1 YEAR)

The state may review a fully documented request for a price increase only after the contract has been in effect for one (1) year. A price increase adjustment shall only be considered at the time of a contract extension and shall be a factor in the extension review process. The department of health services, procurement office shall determine whether the requested price increase or an alternate option is in the best interest of the state.

The contractor shall offer the state a price reduction on the contract product(s) concurrent with a published price reduction made by the manufacturer to other customers.

The price increase adjustment, if approved, will be effective upon the effective date of the contract extension. Price reductions will become effective upon acceptance by the state.

7. DELIVERY (24 hours)

Delivery shall be made within twenty-four hours from request of the Arizona State Hospital Specialty Clinic.

8. TAX EXEMPTION

It is understood that the exemption from tax in the case of sales of articles to state agencies or political subdivisions thereof is limited to articles purchased for use in the exercise of essential government functions, and it is agreed that where articles purchased tax-free under this exemption certificate are used for purposes other than in the exercise of essential functions, or are sold to employees or others, the vendee will report such facts to the vendor.

9. ELIGIBLE AGENCIES (LISTED)

Any contract resulting from this solicitation shall be for the exclusive use of the state of Arizona agency designated on the cover sheet of this document.

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10. **LICENSES**

The Contractor shall maintain in current status, all federal, state and local licenses and permits required for the operation of the business conducted by the contractor.

11. **INFORMATION DISCLOSURE**

The contractor shall establish and maintain procedures and controls that are acceptable to the state for the purpose of assuring that no information contained in its records or obtained from the state or from others in carrying out its functions under the contract shall be used or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the contract. Persons requesting such information should be referred to the state. The Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of contractor as needed for the performance of duties under the contract, unless otherwise agreed to in writing by the state.

12. **REGULATIONS**

All items supplied on this contract must comply with the current applicable occupational safety and health standards of the State of Arizona Industrial Commission, the National Electric Code, and the National Fire Protection Association Standards.

13. **SERIAL NUMBERS**

Bids must be for equipment on which the original manufacturers' serial number has not been altered in any way. Throughout the contract term, the state reserves the right to reject any altered equipment.

14. **PRODUCT DISCONTINUANCE**

The state may award contracts for particular products and/or models of equipment as a result of this solicitation. In the event that a product or model is discontinued by the manufacturer, the state at its sole discretion may allow the contractor to provide a substitute for the discontinued item. The contractor shall request permission to substitute a new product or model and provide the following:

- a. A formal announcement from the manufacturer that the product or model has been discontinued.
- b. Documentation from the manufacturer that names the replacement product or model.
- c. Documentation that provides clear and convincing evidence that the replacement meets or exceeds all specifications required by the original solicitation.
- d. Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.
- e. Documentation confirming that the price for the replacement is the same as or less than the discontinued model.

15. **ORDER PLACEMENT**

Upon award of a Contract by the Department of Health Services, Procurement Office, any designated agency may procure the specific material and/or service awarded by the issuance of a contract release order to the appropriate contractor. Each contract release order must cite the correct Arizona contract number. The award of a contract shall be in accordance with the Arizona Procurement Code and all transactions and procedures required by the code for public bidding have been complied with. A contract release order for the awarded material and/or service that cites the correct Arizona contract number is the only document required for the agency to order and the contractor to deliver the material and/or service.

Any attempt to represent any material and/or service not specifically awarded as being under contract with the State of Arizona is a violation of the contract and the Arizona Procurement Code. Any such action is subject to the legal and contractual remedies available to the state inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the contractor.

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16. **BILLING NOTICES**

All billing notices to customer agency shall identify the specific item(s) being billed. Items are to be identified by the name, model number, and/or serial number most applicable. Any contract release order issued by the requesting agency shall refer to the contract number.

17. **LOCAL MAINTENANCE FACILITY**

In order to assure that any ensuing contracts will provide the necessary maintenance support required for the equipment specified, each potential contractor must have local maintenance facilities or have specific agreements in force with a third party to provide local maintenance. Each maintenance facility must be staffed by trained technicians and have a sufficient parts inventory in order to provide quality service on the equipment specified. The Department of Health Services, Procurement Office may inspect the maintenance facilities to determine adequacy.

18. **KEY PERSONNEL**

It is essential that the contractor provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract. The contractor must agree to assign specific individuals to the key positions.

The contractor agrees that, once assigned to work under this contract, key personnel shall not be removed or replaced without written notice to the state.

If key personnel are not available for work under this contract for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the contractor shall immediately notify the state, and shall, subject to the concurrence of the state, replace such personnel with personnel of substantially equal ability and qualifications.

19. **LOANER EQUIPMENT**

The vendor shall repair or replace any parts that fail while under warranty. The vendor shall provide loaner equipment until repairs or replacement can be completed. Repair or replacement shall be made within twenty-four (24) hours after receipt of request.

20. **INSTALLATION**

Installation shall include all electrical hook-up, testing procedures and operator training.

21. **EQUIPMENT OPTIONS**

A request for the addition of options to particular machines may be submitted at any time during the contract period. The state, at its own discretion, may accept a request for the addition of options. The contractor shall submit, in writing, a request for the addition of options and provide the following:

Documentation showing that the option was: 1) Not available for the contract machine at the original time of bid and has not been available for more than 30 days prior to the request, or; 2) The option is made available due to a model substitution.

The option is priced at a similar discount to the original options at the original time of bid. Manufacturer's price lists and vendor pricing data shall be submitted as documentation.

The option is an enhancement to the machine that will be beneficial to the state and does not significantly hinder the original performance of the machine, as determined by the state.

The option does not change the original requirements of the category for which the machine was awarded, as determined by the state.

All additions of options shall become effective upon approval of the state.

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22. NEW PRODUCTS

New products announced by manufacturers on contract may be submitted by the contractor for add-on to the existing contract. Pricing shall be equivalent to the percentage discount for each brand or class of product originally offered.

23. ESTIMATED USAGE

The contract shall be on an as needed, if needed basis. The state makes no guarantee as to the number of days required.

24. NEW EQUIPMENT

All equipment, materials, parts and other components incorporated in the work or an item covered by this contract shall be new, of the latest model and of the most suitable grade for the purpose intended. Any and all work under this contract shall be performed in a skilled and workmanlike manner.

25. TRAINING

The contractor shall provide training to state personnel that will assure proper operation and utilization of the equipment supplied. All manuals necessary for the required training shall be furnished by the contractor with each equipment order.

26. INDEMNIFICATION:

Contractor agrees to indemnify, defend, save and hold harmless the State of Arizona, and their respective directors, officers, officials, agents and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, costs, losses, or expenses, including reasonable attorney's fees, (hereinafter collectively referred to as "Claims") arising out of actual or alleged bodily injury or personal injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of Contractor's directors, officers, agents, employees, volunteers or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all Claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

INSURANCE REQUIREMENTS:

Vendor shall procure and maintain, until all of their obligations, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the purchase and or use of the commodity.

The *insurance requirements* herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Vendor from liabilities that might arise out of the purchase and use of the commodities sold under this Contract by the Vendor, his agents, representatives, employees or subcontractors and Vendor is free to purchase such additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage at least as broad and with limits of liability not less than those stated below.

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability.

•General Aggregate	\$2,000,000
•Products – Completed Operations Aggregate	\$1,000,000
•Personal and Advertising Injury	\$1,000,000
•Fire Legal Liability	\$ 50,000

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- | | |
|---------------------------------------------------|-------------|
| •Blanket Contractual Liability – Written and Oral | \$1,000,000 |
| •Each Occurrence | \$1,000,000 |

2. **Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$1,000,000
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- a. The policy shall be endorsed to include the following additional insured language: ***“The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor.”***

3. **Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$ 500,000
Disease – Each Employee	\$ 500,000
Disease – Policy Limit	\$1,000,000

- a. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies are to contain, or be endorsed to contain, the following provisions:

1. The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.
2. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.
3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the State of Arizona. Such notice shall be sent directly to **(State of Arizona Department Representative's Name and Address)** and shall be sent by certified mail, return receipt requested.

D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with duly licensed or approved non-admitted insurers in the State of Arizona with an “A.M. Best” rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Vendor from potential insurer insolvency.

E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract. All certificates required by this Contract shall be sent directly to **(State of Arizona Department Representative's Name and Address)**. The State of Arizona project/contract number and project description are to be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

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DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT SECTION.

- F. **APPROVAL:** Any modification or variation from the *insurance requirements* in this Contract must have prior approval from the State of Arizona Department of Administration, Risk Management Section, whose decision shall be final. Such action will not require a formal contract amendment, but may be made by administrative action.
- G. **EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university then none of the above shall apply.

27. **CONFIDENTIALITY OF RECORDS**

The contractor shall establish and maintain procedures and controls that are acceptable to the state for the purpose of assuring that no information contained in its records or obtained from the state or from others carrying out its functions under the contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the contract. Persons requesting such information shall be referred to the state. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the contractor as needed for the performance of duties under the contract, unless otherwise agreed to in writing by the state.

28. **BRAND NAMES**

Any manufacturer's names, trade names, brand names or catalog numbers used in the specifications are for the purpose of describing and/or establishing the quality, design and performance required. Any such reference is not intended to limit or restrict an offer by any vendor but is only enumerated in order to advise potential bidders of the requirements of the state. Any offer which proposes like quality, design or performance will be considered.

29. **DESCRIPTIVE LITERATURE**

All offers must include complete manufacturers' descriptive literature regarding the equipment they propose to furnish. Literature shall be sufficient in detail in order to allow full and fair evaluation of the offer submitted. Failure to include this information may result in the offer being rejected.

30. **CURRENT PRODUCTS**

All products offered in response to this solicitation shall be in current and ongoing production; shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in this solicitation.

31. **INVENTORY**

The state of Arizona has an ongoing requirement for the material indicated in this solicitation. It is an express condition of any award that a contractor shall maintain a reasonable stock on hand for delivery to the requesting agency. Failure to maintain such a stock may result in cancellation.

32. **NON EXCLUSIVE CONTRACT**

Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the state of Arizona. The state reserves the right to obtain like goods or services from another source when necessary. Off-contract purchase authorization (SPO form 150) may only be approved by the state procurement administrator. Approval shall be at the exclusive discretion of the state procurement administrator and shall be final. However, approval shall be granted only after a proper review and when deemed to be appropriate. Off-contract procurement shall be consistent with the Arizona procurement code.

<p style="text-align: center;">SPECIAL TERMS AND CONDITIONS SOLICITATION NO: HB841035</p>

33. **CATALOG/PRICE LIST DISCOUNTS**

The bidder is to offer prices based on a percent of discount off of a referenced manufacturer's price list. A copy of the referenced price list and the applicable catalog(s) shall be enclosed with the bid. Failure to include either the manufacturer's price list or the applicable catalog(s) shall be grounds for determining the bid as non-responsive.

Prices calculated by the bidder shall be entered on the price sheet provided. Prices entered shall be computed using the same discount referenced by the bidder on the attachment provided. In the event of contract award, the contractor shall furnish all items in the manufacturer's catalog, at the discount offered, using the referenced price list.

Additionally, the contractor must provide, at no cost to the state, copies of the referenced catalog(s) and price list to all eligible agencies.

34. **DEFECTIVE PRODUCTS**

All defective products shall be replaced and exchanged by the contractor. The cost of transportation, unpacking, inspection, repacking, the vendor shall pay reshipping or other like expenses. All replacement products must be received by the state within seven (7) days of initial notification.

SCOPE OF SERVICE

SOLICITATION NO: HB841035

1. BACKGROUND

The Arizona State Hospital (Hospital) is a unit of the Division of Behavioral Health Services (BHS) of the Arizona Department of Health Services (ADHS). It is established and operated under A.R.S. 36-202 “for the care and treatment of persons with mental disorders and persons with other personality disorders or emotional conditions who will benefit from care and treatment.”

The Hospital’s Mission Statement: “To restore and enhance the mental health of persons requiring psychiatric services in a safe and therapeutic environment” encompasses all aspects of the patient’s daily life, treatment, and environment. The Contract is a key component to ensure that the Mission Statement is fulfilled. The successful Contractor shall demonstrate in its Proposal and contract execution, the same level of caring and attention to detail to the patient’s health and comfort that the Hospital staff exhibits on a daily basis.

The Hospital provides treatment and rehabilitative services to the most severely mentally ill persons in the state. This is a court-ordered, civil, and forensic committed treatment center. Individuals must be suffering from a behavioral health illness, which has severely impaired their functioning and ability to live within their family and community. The Hospital’s current population is approximately 275 patients.

The Arizona State Legislature enacted A.R.S. 36-3701 in the 1997 legislative session requiring the housing of “sexually violent persons” (SVP) at the Arizona State Hospital in the Arizona Community Protection and Treatment Center (ACPTC) program.

ACPTC provides for a secure treatment environment for sexually violent persons (“residents”) who have been determined to have a mental disorder and need to be committed to protect the health and safety of others in the community. The ACPTC’s current population is approximately 100 residents.

The Hospital and ACTPC, otherwise known as The Hospital, are located at 2500 East Van Buren Street, Phoenix, Arizona 85008. The Hospital operates twenty-four hours (24) per day, three hundred sixty-five (365) days per year.

2. OBJECTIVE

Contractor shall provide a source for on-demand rental or lease purchase options of needed medical equipment, when the Hospital does not have the equipment, or the requirement exceeds the availability, or if the procurement process will delay the medical emergency of the patient.

3. TASKS

A. Contractor shall provide on demand rental and/or lease purchase medical equipment to include, but not limited to, the list shown below. If a purchase option is exercised, rental monies paid will apply to the purchase cost. The equipment shall be state of the art and like new condition, unless prior Arizona State Hospital, Material Management Specialty Clinic (Hospital) representative’s approval is obtained.

1. Continuous Positive Motive Machine (CPM)
2. Bariatric Equipment: beds, lifts, wheelchairs, bedside commodes
3. Continuous Positive Air Pressure C-PAP machines
4. Hospital beds, semi electric
5. Oxygen Concentrators
6. Infusion Pumps, compatible with Baxter 6201, must ensure free-flow protection on all general use and PCA (patient controlled analgesia), and must be sufficiently audible.
7. Pulse Oximeters
8. Alternating Pressure Pads
9. Low Air Loss Mattress Overlays
10. Wheel Chairs and Geri Chairs

B. Contractor shall apply Long Term Care (LTC) Standard Cap Rental Policy to LTC Therapy Products that are eligible and can be capped. Therapy Products must meet the following criteria:

1. Products must have billed up to the Cap Rental Price.
2. Products must have no breaks in service.

<p style="text-align: center;">SCOPE OF SERVICE SOLICITATION NO: HB841035</p>

3. Products must have no special pricing in effect.
4. Products cannot cross SBU's.
5. There can be no change in product.

C. Contractor shall -

1. Provide pick up, delivery and service of the equipment;
2. Be available Monday through Friday 8:00 A.M to 5:00 P.M.;
3. And have access to a twenty-four (24) hour messaging service;
4. Respond/deliver all requested items/equipment within twenty-four (24) hours.

D. Contractor shall provide the services contained herein in such a manner that does not result in damage to the existing grounds, landscaping, utilities, or structures. In the event that damage does occur during the performance of this Contract, Contractor shall repair or replace the damage at no cost to the Hospital. If Contractor fails or refuses to make proper repairs or replacements, the Contractor shall be liable for the cost thereof which may be deducted from unpaid invoices or by any other means provided by law.

E. Contractor shall perform all services in accordance with all rules and regulations as stipulated by the Joint Commission, CMS, State Licensure, Office of Behavioral Health, OSHA, EPA, Maricopa County, City of Phoenix, all federal and county rules, Hospital Policies and Procedures, HIPAA regulations and executed contract.

F. Contractor shall obey all posted speed limits on Hospital grounds.

G. No cameras, including cell phones with built-in cameras, are permitted on Hospital property.

H. The Hospital grounds are drug-, alcohol- and tobacco-free, and Contractor must comply with these rules.

I. Contractor shall not bring firearms on to Hospital property.

4. NOTICES, CORRESPONDENCE, REPORTS, AND INVOICES

Notices, Correspondence, Billings/Contract Expenditures and Reports from the Contractor to the Hospital shall be sent to:

Arizona State Hospital
Business Manager
2500 East Van Buren Street
Phoenix, Arizona 85008

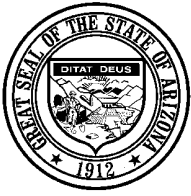
Invoices for services performed are due to the Hospital Business Manager within thirty (30) days after the end of each month and shall specify dates and number of hours (if applicable) that services were rendered.

Each invoice shall be for the full calendar month, for example June 1st through June 30th.

Invoices for the Hospital shall be sent to the following address:

Arizona State Hospital
Business Manager
2500 East Van Buren Street
Phoenix, Arizona 85008

Invoices shall be paid by ADHS within thirty (30) days following receipt of the invoice. In the case of any dispute regarding part of any invoice, ADHS shall pay the undisputed part according to the payment terms described above.



OFFER AND ACCEPTANCE

SOLICITATION NO: HB841035

**ARIZONA DEPARTMENT
OF HEALTH SERVICES**
1740 West Adams Street
Phoenix, Arizona 85007
(602) 542-1040
(602) 542-1741 Fax

Submit this form with an original signature to the:

**Arizona Department of Health Services
Office of Procurement
1740 West Adams, Room 303
Phoenix, Arizona 85007**

The Undersigned hereby offers and agrees to furnish the material, service or construction in compliance with all terms, conditions, specifications and amendments in the solicitation.

Arizona Transaction (Sales) Privilege Tax License No:

For Clarification of this Offer, Contact:

Federal Employer Identification No:

Name:

Telephone: _____

FAX: _____

Company Name

Signature of Person Authorized to Sign Offer

Address

Printed Name

City, State, ZIP Code

Title

OFFER ACCEPTANCE AND CONTRACT AWARD (For State of Arizona Use Only)

Your Offer is hereby accepted as described in the Notice of Award. The Contractor is now bound to perform based upon the Solicitation and the Contractor's Offer as accepted by the State.

This Contract shall henceforth be referred to as Contract Number: **HB841035-**

The Contractor is hereby cautioned not to commence any billable work or provide any material, service or construction under this Contract until the Contractor receives an executed purchase order or Contract release document or written notice to proceed, if applicable.

State of Arizona

Awarded this _____ day of _____, 2007

Procurement Officer

PRICE SHEET/FEE SCHEDULE
SOLICITATION NO: HB841035

EQUIPMENT DESCRIPTION	DAILY Unit Rate	Monthly UNIT RATE
Continuous Positive Motive Machine		
Bariatric Beds		
Bariatric Lifts		
Bariatric Wheelchairs		
Bariatric Bedside Commodes		
Continuous Positive Air Pressure C- PAP Machines		
Hospital Beds, Semi Electric		
Oxygen Concentrators		
Infusion Pumps, Compatible with Baxter 6201		
Pulse Oximeters		
Alternating Pressure Pads		
Low Air Loss Mattress Overlays		
Wheel Chairs and Geri Chairs		
Percentage off all other catalogue items not listed		

ATTACHMENT A
SOLICITATION NO: HB841035

**HEALTH INSURANCE PORTABILITY & ACCOUNTABILITY ACT OF 1996 (“HIPAA”)
BUSINESS ASSOCIATE AGREEMENT (“AGREEMENT”)**

The Arizona Department of Health Services or an Arizona Department of Health Services’ Division, Bureau, Office, or Program and Business Associate hereby enter into this Agreement. The date when this Agreement is effective (“Effective Date”) shall be determined according to Sections 164.534, 164.532(d), and 164.532(e) of the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and Part 164, Subparts A and E (“Privacy Standards”). This Agreement supplements any service agreement(s) (“Service Agreement(s)”) between ADHS Covered Component and Business Associate relating to the disclosure of Protected Health Information (“PHI”). In the event of conflicting terms or conditions, this Agreement shall supersede the Service Agreement(s).

The ADHS Covered Component and Business Associate intend to comply with the Privacy Standards; the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C (“Security Standards”); HIPAA; and other applicable federal and state laws, in order to protect the privacy of PHI in any form and to safeguard the confidentiality, integrity, and availability of Electronic PHI (“ePHI”) related to this Agreement.

A. **DEFINITIONS.** Capitalized terms not otherwise defined in this Agreement shall have the same meaning as in the Privacy Standards and the Security Standards.

B. **PERMITTED USES AND DISCLOSURES OF PHI.** Business Associate will Use and disclose PHI only for those purposes necessary to perform functions, activities, or services for, or on behalf of, ADHS Covered Component as specified in the underlying Service Agreement(s) and this Agreement, provided that any Use or Disclosure would not violate: the Privacy Standards, the Security Standards, or HIPAA, if done by ADHS Covered Component; or ADHS Covered Component’s policies and procedures for using or disclosing only the Minimum Necessary PHI.

1. **Business Activities of Business Associate.** Business Associate may use PHI for the necessary management and administration of Business Associate, or to carry out the legal responsibilities of Business Associate if:

The disclosure is Required by Law; or

Business Associate obtains reasonable assurances from the person receiving the PHI that the person will:

- (1) Maintain the Confidentiality of the PHI,
- (2) Use or disclose the PHI only as Required by Law or for the purpose for which the PHI was disclosed to the person, and
- (3) Notify Business Associate when the person becomes aware that PHI confidentiality has been breached.

2. **Aggregation of PHI.** Business Associate may aggregate the PHI in its possession with the PHI of other Covered Entities that Business Associate has in its possession through its capacity as a Business Associate of the other Covered Entities, provided that the purpose of the aggregation is to provide ADHS Covered Component with data analyses relating to the Health Care Operations of ADHS Covered Component. Business Associate shall not disclose PHI between or among Covered entities, unless ADHS Covered Component specifically authorizes the disclosure.

3. **De-Identification of PHI.** Under 45 CFR 164.502(d)(2), de-identified information does not constitute PHI and is not subject to the terms of this Agreement. Business Associate may de-identify any and all PHI, provided:

- a. The de-identification conforms to the requirements of 45 CFR Section 164.514(b),
- b. Business Associate maintains the documentation required by 45 CFR Section 164.514(b), and
- c. Business Associate gives written assurance to ADHS Covered Component that Business Associate appropriately maintains the documentation required by 45 CFR Section 164.514(b).

ATTACHMENT A
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C. OBLIGATIONS OF BUSINESS ASSOCIATE REGARDING PHI IN ANY FORM.

1. **Safeguards.** Business Associate shall use appropriate safeguards to prevent any Use or Disclosure of PHI not otherwise permitted in this Agreement.
2. **Reporting Impermissible Use or Disclosure.** Recipient shall promptly report to the designated individual specified in the Notice Provision number “G” of this agreement. Any Use or Disclosure of any PHI not permitted by this Agreement or the Privacy Standards (“Impermissible Use or Disclosure”), upon becoming aware of such Use or Disclosure. Recipient agrees to mitigate, to the extent practicable, any harmful effect from an Impermissible Use or Disclosure known to Recipient or its agents or subcontractors.
3. **Agents and Subcontractors.** Business Associate shall ensure that any agent or subcontractor to whom Business Associate provides PHI agrees to all the PHI-related restrictions and conditions that apply to Business Associate through this Agreement. Business Associate shall maintain an accounting of all disclosures of PHI to agents or subcontractors as provided in this Agreement.
4. **Personnel.** Business Associate shall appropriately inform all of its employees, agents, representatives, and members of its workforce (“Personnel”), whose services may be used to satisfy Business Associate’s obligations under this Agreement and the Service Agreement(s), of the terms of this Agreement. Business Associate represents and warrants that the Personnel are under sufficient legal obligation to Business Associate for Business Associate to fully comply with the provisions of this Agreement.
5. **Access to PHI.** Within five (5) business days after a written request by ADHS Covered Component for access to PHI held by Business Associate in a Designated Record Set, Business Associate shall make the requested PHI available to ADHS Covered Component. If the requested PHI is stored off site, Business Associate shall make the PHI available to ADHS Covered Component within ten (10) business days, to allow ADHS Covered Component time to respond to a request for access by an Individual within 60 calendar days.

If an Individual requests access to PHI directly from Business Associate, Business Associate shall provide or deny access according to 45 CFR 164.524, unless otherwise directed by ADHS Covered Component. Business Associate shall notify ADHS Covered Component of the action taken in writing within five (5) business days after the action.

6. **Amendment of PHI.** Within five (5) business days after an Individual’s request to ADHS Covered Component to amend the Individual’s PHI held by Business Associate in a Designated Record Set, Business Associate shall provide the Individual’s PHI to ADHS Covered Component for amendment. If ADHS Covered Component requests Business Associate to amend an Individual’s PHI, Business Associate shall incorporate into the Individual’s PHI the amendment, any statements of disagreement, and/or rebuttals within a reasonable time, as required by 45 CFR Section 164.526.

If an Individual requests amendment of PHI directly from Business Associate, Business Associate shall amend or deny amendment according to 45 CFR 164.526, unless otherwise directed by ADHS Covered Component. Business Associate shall notify ADHS Covered Component of the action taken in writing within five (5) business days after the action.

7. **Documentation of Disclosures.** Business Associate agrees to document all Disclosures of PHI made by Business Associate as required for ADHS Covered Component to respond to a request by an Individual for an accounting of Disclosures of PHI according to 45 CFR Section 164.528. At a minimum, the documentation related to Business Associate’s Disclosure of PHI shall include:

The date of Disclosure;

The name of the PHI recipient and, if known, the address of the PHI recipient;

A brief description of the PHI disclosed; and

A brief statement of the purpose of the disclosure that reasonably informs the Individual of the basis for the Disclosure, or a copy of the Individual’s authorization, or a copy of the written request for Disclosure.

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8. **Accounting of Disclosures.** Within ten (10) business days after notice by ADHS Covered Component to Business Associate that ADHS Covered Component has received a request for an accounting of Disclosures of an Individual's PHI, Business Associate shall provide ADHS Covered Component with the Disclosure records stated in the notice. Business Associate shall provide Disclosure records for the six years before the date on which the Individual requested the accounting, but not for a date earlier than April 14, 2003, unless otherwise Required by Law.

If an Individual requests an accounting of Disclosures directly from Business Associate, Business Associate shall, within sixty (60) business days, provide or deny an accounting according to 45 CFR 164.528, unless otherwise directed by ADHS Covered Component. Business Associate shall notify ADHS Covered Component of the action taken in writing within five (5) business days after the action. The accounting of Disclosures shall include all PHI Disclosures for the six years before the date on which the Individual requested the accounting, but not for a date earlier than April 14, 2003, unless otherwise Required by Law. If Business Associate is unable to provide the accounting of Disclosures within the allowed time, Business Associate shall provide ADHS Covered Component with a written statement of the reason for delay and the date Business Associate will provide the accounting.

9. **Governmental Access to Records.** For the purpose of determining ADHS Covered Component's compliance with the Privacy Standards, Business Associate shall make available to ADHS Covered Component or to the Secretary:

- a. Business Associate's internal practices, books, and records relating to the Use and Disclosure of PHI;
- b. Business Associate's policies and procedures relating to the Use and Disclosure of PHI; and
- c. All PHI received from ADHS Covered Component or created or received by Business Associate on behalf of ADHS Covered Component.

This provision does not constitute a waiver by ADHS Covered Component of any attorney-client privilege or other legal privilege.

10. **Transaction Standards Regulation.** If Business Associate conducts in whole or part Standard Transactions for or on behalf of ADHS Covered Component, Business Associate shall comply with the Electronic Data Transaction Standards and Code Sets, 45 CFR Part 162, Subparts I through R ("Transaction Standards and Code Sets"). Business Associate shall require any subcontractor or agent involved in conducting Standard Transactions for or on behalf of ADHS Covered Component, to comply with the Transaction Standards and Code Sets. Business Associate and its subcontractors or agents shall not enter into any agreement related to conducting in whole or in part Standard Transactions for or on behalf of ADHS Covered Component that:

- a. Changes the definition, Data Condition, or use of a Data Element or Segment in a Standard Transaction;
- b. Adds any Data Elements or Segments to the maximum defined Data Set;
- c. Uses any code or Data Element that is marked "not used" in the Standard Transaction's implementation specification or that is not in the Standard Transaction's implementation specification; or
- d. Changes the meaning or intent of the Standard Transaction's implementation specification.

D. **OBLIGATIONS OF BUSINESS ASSOCIATE REGARDING ePHI.**

- 1. **Safeguards.** Business Associate shall implement Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity, and Availability of the ePHI that Business Associate creates, receives, maintains, or transmits on behalf of ADHS Covered Component.
- 2. **Agents and Subcontractors.** Business Associate shall ensure that any agent or subcontractor to whom Business Associate provides ePHI agrees to implement reasonable and appropriate safeguards to protect the Confidentiality, Integrity, and Availability of the ePHI.
- 3. **Report of Security Incident.** Business Associate shall promptly report to ADHS Covered Component any Security Incident of which Business Associate becomes aware that involves ePHI created, received, maintained, or transmitted by Business Associate.

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4. **Governmental Access to Records.** Business Associate shall make its policies, procedures, and the documentation required by the Security Standards available to ADHS Covered Component and to the Secretary for purposes of determining ADHS Covered Component's compliance.
5. **Termination Authorized.** Business Associate agrees that ADHS Covered Component may terminate this Agreement if ADHS Covered Component determines that Business Associate has violated a material term of this Agreement related to the Security of ePHI.

E. OBLIGATIONS OF ADHS COVERED COMPONENT.

1. **Notice of Privacy Practices.** ADHS Covered Component shall notify Business Associate of any changes or limitation(s) in ADHS Covered Component's Notice of Privacy Practices according to 45 CFR Section 164.520, to the extent that such changes or limitation(s) may affect Business Associate's Use or Disclosure of PHI.
2. **Changes in Permission by Individual.** ADHS Covered Component shall notify Business Associate of any changes in, or revocation of, an Individual's permission to use or disclose PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.
3. **Restrictions on PHI.** ADHS Covered Component shall notify Business Associate of any restriction of PHI Uses and Disclosures that ADHS Covered Component has agreed to in accordance with 45 CFR Section 164.522, to the extent that such restriction may affect Business Associate's PHI Use or Disclosure.
4. **Permissible Requests by ADHS Covered Component.** ADHS Covered Component shall not request Business Associate to use or disclose PHI in any manner not permitted under the Privacy Standards if done by ADHS Covered Component.

F. TERM AND TERMINATION

1. **Term.** The term of this Agreement shall begin on the Effective Date and shall terminate when all PHI provided by ADHS Covered Component to Business Associate, or created or received by Business Associate on behalf of ADHS Covered Component, is destroyed or returned to ADHS Covered Component. If it is not feasible for Business Associate to return or destroy all PHI, the term of this Agreement shall terminate, except to the extent protections are extended to any PHI not returned or destroyed, according to the provisions in Section F(2)(c).
2. **Effect of Termination.**
 - a. Except as provided in paragraph (c) of this Subsection, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from ADHS Covered Component, or created or received by Business Associate on behalf of ADHS Covered Component.
 - b. This provision shall apply to PHI in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the returned or destroyed PHI.
 - c. If Business Associate determines that returning or destroying PHI is not feasible, Business Associate shall provide to ADHS Covered Component notification of the conditions making return or destruction not feasible. Business Associate shall extend the protections of this Agreement to the PHI and shall limit further Uses and Disclosures of the PHI to the purposes that make the return or destruction not feasible, for so long as Business Associate maintains the PHI. If it is not feasible for Business Associate to recover from a subcontractor or agent any PHI, Business Associate shall provide a written explanation to ADHS Covered Component. Business Associate shall require the subcontractor or agent to agree:
 - (1) To extend the protections of this Agreement to the PHI in the possession of the subcontractor or agent, and
 - (2) To limit any further Uses or Disclosures of the PHI to the purposes that make the return or destruction not feasible, for so long as the subcontractor or agent maintains the PHI.
3. **Termination for Cause.** Upon ADHS Covered Component's knowledge of a material breach by Business Associate of the terms of this Agreement, ADHS Covered Component shall:

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- a. Terminate this Agreement and the underlying Service Agreement(s) if Business Associate does not cure the breach or end the violation within the time specified by ADHS Covered Component;
- b. Immediately terminate this Agreement and the underlying Service Agreement(s); or
- c. Report the violation to the Secretary if:
 - (1) Termination is not feasible, and
 - (2) Business Associate does not cure the breach or end the violation within the time specified by ADHS Covered Component.

G. NOTICES

All notices or other communications by either party to the other hereunder shall be in writing and shall be deemed properly delivered (i) when received by the party; or (ii) three (3) days after deposit in the United States mail of such notice or communications to the parties entitled hereto, registered or certified mail, postage prepaid, to the parties at the following address (or to such other addresses as are designated in writing to all parties):

To:
Address:

Phone Number:

E-mail Address:

Copy to:
Address:

Phone Number:

E-mail Address:

To:
Address:

Phone Number:

E-mail Address:

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H. MISCELLANEOUS

1. **References.** A reference in this Agreement to HIPAA, the Privacy Standards, or the Security Standards means the law or regulation as in effect on the Effective Date or as subsequently amended, and for which compliance is required.
2. **Amendment.** The parties agree to take the action necessary to amend this Agreement from time to time so that ADHS Covered Component may comply with the requirements of HIPAA.
3. **Survival.** The obligations of Business Associate under this Agreement shall survive the termination of this Agreement and of the underlying Service Agreement(s) to the extent required by Section F(2)(c).
4. **Effect on Service Agreement(s).** Except as specifically required to implement the purposes of this Agreement, or to the extent not consistent with this Agreement, all provisions of the underlying Service Agreement(s) shall remain in force and effect.

<p>Contractor hereby acknowledges receipt and acceptance of this HIPAA Agreement and that a signed copy must be filed with the Procurement Office.</p> <div style="display: flex; justify-content: space-between;"><div>_____ Signature</div><div>_____ Date</div></div> <div>_____ Authorized Signatory's Name and Title:</div> <div>_____ Contractor's Name</div>	<p>The above referenced HIPAA Agreement is hereby executed this _____ day of _____ 20__ by the Arizona Department of Health Services.</p> <div style="text-align: center;">_____ Procurement Officer</div>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

	CERTIFICATE OF INSURANCE Exhibit A	ARIZONA DEPARTMENT OF HEALTH SERVICES 1740 W. Adams, Room 303 Phoenix, Arizona 85007 (602) 542-1040 (602) 542-1741 Fax	
Solicitation No: HB841035			
PRIOR TO COMMENCING SERVICES UNDER THIS CONTRACT, THE CONTRACTOR MUST FURNISH THE DEPARTMENT, CERTIFICATION FROM INSURER(S) FOR COVERAGES IN THE MINIMUM AMOUNTS AS STATED BELOW, THE COVERAGES SHALL BE MAINTAINED IN FULL FORCE AND EFFECT DURING THE TERM OF THIS CONTRACT, AND SHALL NOT SERVE TO LIMIT ANY LIABILITIES OR ANY OTHER CONTRACTOR OBLIGATIONS			
NAME AND ADDRESS OF INSURANCE AGENCY	A	COMPANY LETTER	COMPANIES AFFORDING COVERAGE
	B		
Name And Address of Insured	C		
	D		
This is to certify that the policies of insurance listed below have been issued to the insured named above and are in force at this time			
Company Letter	Type of Insurance	Policy Number	Policy Expiration Date Limits of Liability Minimum – Each Occurrence
	<input type="checkbox"/> Comprehensive General Liability <input type="checkbox"/> Premises Operations <input type="checkbox"/> Contractual <input type="checkbox"/> Independent Contractors <input type="checkbox"/> Products/Completed Operations <input type="checkbox"/> Personal Injury <input type="checkbox"/> Broad Form Property Damage <input type="checkbox"/> Explosion & Collapse (If Applicable) <input type="checkbox"/> Underground Hazard (If Applicable)		
	<input type="checkbox"/> Comprehensive Auto Liability Including Non-Owned (If Applicable)		
	<input type="checkbox"/> Umbrella Liability		
	<input type="checkbox"/> Workmen's Compensation and Employer's Liability		
	<input type="checkbox"/> Other		
State of Arizona and the Department named above are added as additional insured as required by statute, Contract, purchase order or otherwise requested. It is agreed that any insurance available to the named insured shall be primary of other sources that may be available.		It is further agreed that no policy shall expire, be canceled or materially changed to affect the coverage available to the State without thirty (30) days written notice to the State. THIS CERTIFICATE IS NOT VALID UNLESS COUNTERSIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE INSURANCE COMPANY.	
Name and Address of Certificate Holder: _____ <div style="text-align: right; margin-top: 20px;"> Date Issued _____ _____ Authorized Representative </div>			